83-732

CASE NO.

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1983

LEROY BOYD,

Petitioner,

v.

SECRETARY OF THE NAVY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

ALGIA R. COOPER, P.A.
24 West Government Street
Suite 275
Pensacola, Florida 32501
(904) 433-2360

Attorney for Petitioner

CASE NO.

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1983

LEROY BOYD,

Petitioner,

v.

SECRETARY OF THE NAVY,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT
OF APPEALS FOR THE ELEVENTH CIRCUIT

ALGIA R. COOPER, P.A.
24 West Government Street
Suite 275
Pensacola, Florida 32501
(904) 433-2360

Attorney for Petitioner

The Petitioner seek a writ of certiorari to review an opinion and judgment of the United States Court of Appeals for the Eleventh Circuit.

QUESTION PRESENTED

1. Did the court of appeals incorrectly interpreted this Court's decision in Connick v. Myers, ____ U.S. ____, 103 S.Ct. 1684, 75 L.Ed 2d 708 (1983), holding that Respondent did not violate Section 552a(e)(7) of the Privacy Act?

PARTIES

Petitioner (Plaintiff):

LEROY BOYD

Respondent (Defendant):

SECRETARY OF THE NAVY

TABLE OF CONTENTS

TABLE OF AUTHORITIES

OFFICIAL REPORTS OF CASE

The decision of the court of appeals is reported at 709 F.2d 684 (11th Cir., 1983). The decision of the district court is reported but is contained in the Appendix to this Petition.

GROUNDS FOR INVOKING JURISDICTION

The judgment of the United States Court of Appeals for the Eleventh Circuit was entered on July 11, 1983. Jurisfiction conferred by 28 U.S.C. Sections 1254(1) and 2101(c).

The appeals court rendered a decision in conflict with this Court's opinion in Connick v. Myers, ____ U.S. ____, 103 S.Ct. 1684, 75 L.Ed 2d 708 (1983), decided an important question of federal law which has not been, but should be settled by this court.

STATUTORY PROVISIONS INVOLVED

...

(e) Each agency that maintains a system of record shall

...

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.

STATEMENT OF THE CASE

Petitioner, Leroy Boyd is a machinist supervisor at the Naval Air Rework Facility in Pensacola, Florida.

Petitioner brought a suit pursuant to 5 U.S. C. §552a of the Privacy Act alleging that maintenance of a memorandum of record by Respondent violated Section 5 U.S.C. §552a(e)(7) of the Privacy Act.

The district court held that Section 552a(e)(7) of the Act was not violated because it did describe one exercise of First Amendment Rights. Boyd supra.

Petitioner appealed to the United States Court of Appeals for the Eleventh Circuit pursuant to 28 U.S.C. §1291. The appeals court found that the documents involved did not implicate First Amendment Rights. Boyd at 687-688. Citing to

this court's decision in Connick, the appeals court found that only "...touched upon matters of public concern only in a most limited sense... (It) is most accurately characterized as an employee grievance concerning internal office policy." Boyd at 687. Because the appeals court found:

> The memorandum reflected a reasonable regulation of the time, place and manner of expression, (it) did not infringe upon the first amendments and this did not violate the privacy act. Boyd at 687-688.

REASONS FOR GRANTING THE WRIT

The appeals court incorrectly found that the memorandum in the case did not implicate First Amendment Rights.

Section 552a(e)(7) provides in relevant part:

> (e) Each agency that maintains a system of records shall
>
> (7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment...

The court of appeals correctly found that a record does not have to be in the "system of records" within the meaning to violate the above-cited provision. Boyd at 687. Clarkson v. Internal Revenue Service, 678 F2d 1368, 1375-77 (11th Cir., 1982); Albright v. United States, 203 U.S. App. D.C. 333, 631 F2d 915 (D.C., Cir., 1980).

The Privacy "Act" was intended to balance the federal government's need to gather information with an individual's right to privacy,

Voelker v. IRS, 646 F2d 332, 334 (8th Cir., 1981)

and to

> promote "governmental respect for the privacy of citizens by requiring all departments and agencies of the executive branch and their employees to observe certain constitutional rules in the computerization, collection, management, use, and disclosure of information about individuals.

Wren v. Harris, 675 F2d 1144 (10th Cir., 1982).

The court of appeals holding was that the memorandum:

> Merely recorded that he was told at the meeting and informed him of the need to follow the chain of command. ...the memorandum did not discuss the contents of his prior memos, and he was not prevented from writing future memos except for the requirement that he follow the chain of command. Boyd at 685.

The premise for the appeals court finding was that Petitioner's speech was related to his private interests and not a matter of public concern, therefore, no First Amendment Rights were

implicated. Thus, the critical inquiry in the case was whether the memorandum was one which falls within the protection of the First Amendment. In Boyd, the court stated:

> The memorandum in this case did not implicate Boyd's first amendment rights. Like the questionnaire in Myers, Boyd's memo "touched upon matters of public concern only in a most limited sense... (It) is most accurately characterized as an employee grievance concerning internal office policy." Myers, ____ U.S. at ____, 103 S.Ct. at 1693-94. The memorandum merely recorded what he was told at the meeting and informed him of the need to follow the chain of command. The instruction was a valid restriction on the time, place and manner of Boyd's expression. The memorandum did not discuss the contents of his prior memos, and he was not prevented from writing future memos except for the requirement that he follow the chain of command. This procedure left "open adequate alternative channels of communication." Schad v. Borough of Mount Ephriam, 452 U.S. 61, 76, 101 S.Ct. 2176, 2186, 68 L.Ed.2d 671 (1981). The memorandum reflected a reasonable regulation of the time, place and manner of expression, did not infringe upon the first amendment, and thus did not violate the Privacy Act. Boyd at 687.

This court's opinion in Connick is not authority that the memorandum did not violate Section 552a(e)(7) of the Privacy Act. Connick recognizes that a public employee has a First Amendment privilege to comment on matters of public concern. Connick supra. It is also well settled that First Amendment protection applies even if the "public employee arranges to communicate privately with his employer rather than to express his views privately." Connick at 1689. Givhan v. Western Line Consolidated School District, 439 U.S. 410, 99 S.Ct. 693 (1979). In Givhan, the court found that the public employee's privately expressed comments regarding "the school district's allegedly racially discriminatory policies involved a matter of public concern." Connick at 1689.

In Givhan at 697, this court stated:

> The First Amendment forbids abridgment of the "freedom of speech." Neither the Amendment itself nor our decision indicate that this freedom is lost to the public employee who arranges to communicate privately with his employer rather than to spread his views before the public. We decline to adopt such a view of the First Amendment.

It is clear, therefore, it was not necessary for Petitioner to publicize his opinions related to his employer's employment practices outside the internal office environment for them to come within First Amendment Protection. The court of appeals summarized Petitioner's expressions to his supervisors as follows:

> In April 1981, he authorized a series of memoranda addressed to his supervisors at the rework facility. Boyd opinioned that a planned training program was unnecessary because the facility already employed qualified personnel who could fill the positions. Boyd at 685.

The court of appeals construed Connick as holding that the memorandum did not implicate Boyd's First Amendment Rights because it was more of an "employee's grievance concerning internal office policy." Boyd at 687.

The court of appeals application of Connick in this instance is erroneous. In Connick, this court stated:

> We hold only that when a public employee speaks not as a citizen upon matters of public concern, but instead as an employee upon matters only of personal interest, absent the most unusual circumstances, a federal court is not the appropriate form in which to review the wisdom of a personal decision taken by a public agency in reaction to the employees behavior. Connick at 1690.

Whether an employer engages in protected speech is a question of law, which this court is not bound by the findings of the Eleventh Circuit. Connick at 1690, footnote 7. "Whether an employee's speech addresses a matter of public concern must be

determined by the content, form, and context of a given statement, as revealed by the record as a whole." Connick at 1690.

In Connick, the court found that the speech was not protected because:

> Myers' questionnaire touched upon matters of public concern in only a most limited sense; her survey, in our view, is most accurately characterized as an employee grievance concerning internal office policy. The limited First Amendment interest involved here does not require that Connick tolerate action which he reasonably believed would disrupt the office, undermine his authority, and destroy close working relationships. Myers' discharge therefore did not offend the First Amendment. We reiterate, however, the caveat we expressed in Pickering, supra, at 569, 88 S.Ct., at 1735: "Because of the enormous variety of fact situations in which critical statements by ...public employees may be thought by their superiors...to furnish grounds for dismissal, we do not deem it either appropriate or feasible to lay down a general standard against which all such statements may be judged." Connick at 1693-1694.

In the case at bar, the matter upon which Petitioner opinioned had nothing to do with his own personal interest or private employment status. The purpose of Petitioner's opinion was more "...to evaluate the performance of the office..." not, as this court stated in Connick "...to gather ammunition for another round of controversy with his superiors." Connick at 1691. This court clearly recognized the difference between a public employee's speech related to matters of general concern and matters pertaining to the employee and employment status, as in Connick. In this respect, this court stated:

> This is not a case like Givhan, supra, where an employee speaks out as a citizen on a matter of general concern, not tied to a personal employment dispute, but arranges to do so privately. Mrs. Givhan's right to protest racial discrimination--a matter inherently of public concern--is not forfeited by her choice of a private forum. 439 U.S., at 415-416, 99 S.Ct., at 696-697. Here, however, a questionnaire not otherwise

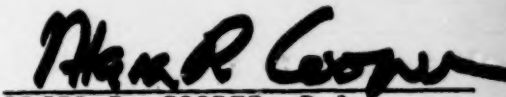
> public concern does not attain that status because its subject matter could, in different circumstances, have been the topic of a communication to the public that might be of general interest. The dissent's analysis of whether discussions of office morale and discipline could be matters of public concern is beside the point--it does not answer whether this questionnaire is such speech. Connick at 1691, footnote 8.

Petitioner's expressions regarding the unnecessary expenditure of public funds to train new employees is clearly a matter of general public concern and protected by the First Amendment, as was the speech this court found protected in Givhan.

CONCLUSION

The writ should be granted.

Respectfully submitted,

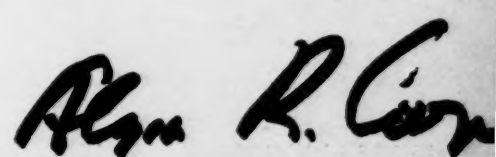


ALGIA R. COOPER, P.A.
24 West Government Street
Suite 275
Pensacola, Florida 32501
(904) 433-2360

Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three copies of the Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit and Appendix were mailed to SAMUAL A. ALTER, JR., Assistant United States Attorney, P.O. Box 12312, Pensacola, Florida 32581 and DAVID E. KIRKPATRICK Trial Attorney, Office of the General Counsel, Litigation Division, Bldg., A-67, Naval Station, Norfolk, Virginia 23511, this 7th day of October, 1983.



ALGIA R. COOPER

Leroy BOYD, Plaintiff-Appellant

v.

SECRETARY OF THE NAVY,
Defendant-Appellee

No. 82-6006
Non-Argument Calendar

United States Court of Appeals
Eleventh Circuit

July 11, 1983

Appeal from the United States District Court for the Northern District of Florida.

Before RONEY, VANCE and ANDERSON, Circuit Judges.

PER CURIAM:

Leroy Boyd appeals a judgment for the defendant in this suit brought pursuant to the Privacy Act. 5 U.S.C. §552a. Boyd contends that certain materials were "records" maintained within a

"system of records" under the Act, and that such materials improperly described exercise of his rights guaranteed by the first amendment. We affirm.

Boyd is employed as a machinist supervisor at the Naval Air Rework Facility in Pensacola, Fla. In April 1981, he authored a series of memoranda addressed to his supervisors at the rework facility. Boyd opined that a planned training program was unnecessary because the facility already employed qualified personnel who could fill the positions.

Appellant forwarded the first three memos via his immediate and second line supervisors, i.e., through the "chain of command." The fourth memo authored by Boyd was sent directly to the department head, bypassing the standard avenues of communication within the facility. Following the fourth memorandum, Boyd's supervisors convened a

meeting between Boyd and two of his supervisors. Boyd claims that during the meeting he was verbally reprimanded and told that he was "antimanagement" for writing the memos. He also claims that the reprimand deterred him from writing further memoranda concerning employment practices. The supervisors, by contrast, testified that the purpose of the meeting was to discuss the proper chain of command and that the only limitation on writing memoranda was that they be sent through the established channels of communication.

Boyd's supervisors made a memorandum of the meeting. They testified that the memo's purpose was to serve as a memory refresher, not as an official record. It was prepared on official Navy stationery and labeled "memorandum for the record." There was an original and one copy, one of which was kept in a personnel file in the desk

of the general foreman and the other in a desk drawer. The memo was not filed by name or number, and it could only be retrieved at random from the folder.

Boyd requested a copy of the memorandum. After being told to give Boyd a copy of the document, one of the supervisors destroyed both the original and the copy. A second copy of the memorandum was subsequently found by an employee, apparently inadvertently, in the mail bins of the rework facility

Boyd filed this lawsuit claiming the Navy violated the Privacy Act by refusing him access to the memo, failing to maintain accurate, relevent and timely records, and destroying the memo. After a bench trial, the district court found for the Navy.

(1)

"Record" Within a "System of Records"

The Privacy Act requires any agency maintaining

a system of records to permit any person, upon request, to gain access to his record or any information about him contained in the system. 5 U.S.C. §552a(d)(1). The district court found that while the memorandum at issue in this case was a "record," it was not maintained in a "system of records." We agree.

(1) The statute defines a "record" as "any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual." Id. at §552a(a)(4) (emphasis added). A record must reflect some quality or characteristic of

the individual involved. See S.Rep. No. 1183, 93d Cong., 2d Sess., reprinted in 1974 U.S. Code Cong. & Ad. News 6916, 6926-28, 6966. See also American Federation of Government Employees v. National Aeronautics and Space Administration, 482 F.Supp. 281, 283 (S.D.Tex. 1980). Because the memorandum in this case reflected Boyd's failure to follow the chain of command and his relationship with management, it was a "record" within the meaning of the Act.

(2) The record was not, however, kept within a "system of records." A "system of records" is a group of records within the agency's control "from which information is retrieved by the name of the individual or by some identifying particular." 5 U.S.C. §552a(a)(5). The Privacy Act Guidelines promulgated by the Office of Management and Budget

provide that individuals only have a right of access to information keyed to the requestor's own name or identifying the number or symbol. See Privacy Act Implementation: Guidelines and Responsibilities, 40 Fed.Reg. 28,948, 28,957 (July 9, 1975). Thus, a record must be maintained by the agency in a group of records cued to the requestor. See Savarese v. Department of Health, Education and Welfare, 479 F.Supp. 304, 307 (N.D. Ga. 1979), Aff'd., 620 F2d 298 (5th Cir., 1980), cert. denied, 449 U.S. 1078, 101 S.Ct. 858, 66 L. Ed.2d 801 (1980); Smiertka v. Department of Treasury, 447 F.Supp. 221, 228-29 (D.D.C. 1978), remanded on other grounds, 604 F.2d 698 (D.C. Cir. 1979).

Private notetaking is not proscribed by the Privacy Act. Such notetaking "may serve as valuable memory refreshers when supervisors are called upon

periodically to evaluate an employee's job performance and work attitude." Chapman v. National Aeronautics and Space Administration, 682 F.2d 526, 528 (5th Cir.1982). See also Thompson v. Department of Transportation, 547 F.Supp. 274, 283 (S.D.Fla.1982). The notes must be kept private and cannot be used in decisions affecting the employment status of an employee. Initially private notes "may become part of the agency's records provided they are placed timely in those records." Chapman, 682 F.2d at 529.

(3) The memorandum in question was not in a "system of records" of the rework facility. It was not keyed to Boyd's name or any identifying number which would subject it to the purpose behind the Privacy Act of protecting information from being gathered through computers or other sophisticated technological equipment. It was

kept within a random-type file and could only be retrieved by searching through the file. Further, it was not used in making any decisions concerning Boyd's employment status. As such, it was merely a memory aid of the superiors who attended the meeting with Boyd. While a copy was found at a later date, it was not retrieved through a "system of records" and its disclosure would not have been a violation of the Privacy Act. See Savarese, 479 F.Supp. at 308.

(2)

First Amendment

(4) The Privacy Act prohibits maintaining any record describing how an individual exercises his or her first amendment rights. The statute provides that governmental entities covered by the Act may "maintain no record describing how an individual exercises rights guaranteed by the First Amendment unless expressly authorized

by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity." 5 U.S.C. §552a(c)(7). See also S.Rep. No. 1183, 93d Cong., 2d Sess., reprinted in 1974 U.S. Code Cong. & Ad. News 6916, 6971. A record need not be within a "system of records" to violate this provision, Clarkson v. Internal Revenue Service, 678 F.2d 1368, 1375-77 (11th Cir.1982); Albright v. United States, 203 U.S.App.D.C. 333, 631 F.2d 915 (D.C.Cir.1980), but for a Privacy Act violation to occur the documents involved must implicate an individual's first amendment rights. Boyd claims that the memorandum in his case violated section 552a(c)(7) of the Act. We cannot agree.

The Supreme Court recently addressed this subject area in Connick v. Myers, ____ U.S. ____, 103 S.Ct. 1684, 75 L.Ed.2d 708 (1983). Myers was

employed as an assistant district attorney. When her supervisors proposed to transfer her, Myers strongly objected. Shortly thereafter, she circulated to other attorneys in her office a questionnaire concerning office transfer policy, morale and the need for a grievance procedure. Myers' employment was terminated and she brought a civil rights action under 42 U.S.C. §1983 contending that her discharge was motivated by her lawful exercise of rights guaranteed by the first amendment.

The Supreme Court found that Myers' dismissal did not offend the first amendment. The Court carefully noted that it "in no sense suggest(ed) that speech on private matters falls into one of the narrow and well-defined classes of expression which carries so little social value, such as obscenity, that the state can prohibit and punish such expression of all persons in its jurisdiction."

Id. at ____, 103 S.Ct. at 1690. It held "only that when a public employee speaks not as a citizen upon matters of public concern, but instead as an employee upon matters only of personal interest, a federal court is not the appropriate forum in which to review the wisdom of a personal decision taken by a public agency allegedly in reaction to the employee's behavior." Id.

(5) The memorandum in this case did not implicate Boyd's first amendment rights. Like the questionnaire in Myers, Boyd's memo "touched upon matters of public concern only in a most limited sense... (It) is most accurately characterized as an employee grievance concerning internal office policy." Myers, ____U.S. at ____, 103 S.Ct. at 1693-94. The memorandum merely recorded him of the need to follow the chain of command. The instruction was a valid restriction on the

time, place and manner of Boyd's expression. The memorandum did not discuss the contents of his prior memos, and he was not prevented from writing future memos except for the requirement that he follow the chain of command. This procedure left "open adequate alternative channels of communication." Schad v. Borough of Mount Ephriam, 452 U.S. 61, 76, 101 S.Ct. 2176, 2186, 68 L.Ed.2d 671 (1981). The memorandum reflected a reasonable regulation of the time, place and manner of expression, did not infringe upon the first amendment, and thus did not violate the Privacy Act.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

LEROY BOYD,

Plaintiff,

vs. PCA 81-0538

SECRETARY OF THE NAVY,

Defendant.

_____/

MEMORANDUM DECISION

This matter came before the court for non-jury trial on August 26, 1982. Testimony was heard and evidence presented.

The first issue for determination by the court was whether the memorandum in question, plaintiff's Exhibit #6, was a record as defined by 5 U.S.C. §552a(4). The memorandum was an item which contained information about the plaintiff and the plaintiff was identified therein, both by name and identification number.

The fact that the statutory definition requires an item be "maintained by an agency" to qualify as a record causes the court concern here. In Porter v. United States, 380 F.Supp, 630 (N.D. Ind. 1974), the court held that, under the Freedom of Information Act, 5 U.S.C. §552, personal notes which are discarded or retained at the author's discretion were not "agency records" within the meaning of that act. In the case at bar, Smith testified that he felt free to discard the memorandum as he pleased and there was no testimony that to do so would be without his authority. The court notes the Freedom of Information Act contains no detailed definition of a record as does the Privacy Act; nonetheless, the Porter principle may well be applicable here.

Testimony established that one copy of the memorandum was kept in a "memo to the file" and that such file was locked at times. For purposes

of this decision the court assumes that the memorandum was maintained by NARF and was a record as defined by the Privacy Act.

Plaintiff bore the burden of proving that the memorandum in question, plaintiff's Exhibit #6 was incorporated in a "system of records" as defined at 5 U.S.C. §552a(a)(5). This definition provides that records are in a system of records if they are "retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual." In Smiertka v. U.S. Department of Treasury, 447 F.Supp. 221 (D. D.C. 1978), Judge Sirica interpreted this definition and held that daily reports concerning an individual's job performance were not part of a system of records because such reports were not accessible through use of an identifier personal to that individual.

In the case at bar, the memorandum in question was not retrievably through use of plaintiff's name or number, but was kept in a desk drawer and in a random-type "memo to the file." An entirely different situation would be presented if the memorandum had been placed in plaintiff's personnel folder; such placement might have satisfied the system of records requirement.

The court in Simertka, supra, also held that, even though the records could easily be retrieved by use of some method other than a personal identifier, they were not in a system of records. The fact that here Smith or Coursen could retrieve the memorandum does not, under the facts here presented, establish the memorandum was in a system of records, within the meaning of the act.

As defendant points out in memorandum, Congress charged the Office of Management and Budget with

promulgating guidelines for interpreting the Privacy Act.

Pertinent guidelines are found at Fed. Reg., Vol. 40, 132, July 9, 1975.[1/] The phrase "under the control of any agency," used to define "system of records," was included to accomplish two separate purposes. The first was to establish accountability and determine possession. The second sought to separate agency records, those in a system of records, from records maintained by agency employees for personal use. The guidelines state that personal notes, papers, and records, retained or discarded at the author's discretion, and over which the agency exercises no control, are

1/ The guidelines are to be given due deference in interpreting the statutes. See, Albright v. United States, 631 F.2d 915, 919 (D.C. Cir. 1980)

not considered to be within a system of records for Privacy Act purposes.

This court finds that, under the Privacy Act's definition, the case law and the guidelines, the memorandum in question was not in a "system of records" of the NARF. Plaintiff cannot prevail in this suit on this contention.

Plaintiff contends the NARF violated 5 U.S. C. §552a(e)(7) because it maintained a record which described how he exercised rights guaranteed by the First Amendment. The court notes that in Albright v. United States, 631 F.2d 915 (D.C. Cir. 1980), the Court of Appeals, District of Columbia Circuit, held that the system of records requirement does not apply to this subsection.

The memorandum in question describes the meeting between Smith, Coursen and plaintiff. At this meeting, Smith explained the chain of command

to Plaintiff and admonished plaintiff not to bypass the chain of command when proffering recommendations. The memorandum reflected this and that Smith told plaintiff he showed no signs of cooperating with management. The memorandum did not discuss or record the contents of plaintiff's previous communication with management; it merely stated that plaintiff was told subsequent communications must be properly presented. The memorandum in question was not a record which described one's exercise of First Amendment rights within the meaning of the Privacy Act.

Although plaintiff did not make a First Amendment challenge to the NARF chain of command policy, the court notes that First Amendment rights of free speech are not absolute and that reasonable time, place and manner restrictions do not violate the First Amendment. See, Phillips v. Adult Pro-

bation, 491 F.2d 951 (9th Cir., 1974).

Defendant contends that plaintiff's communications were part of his job duties and as such were not an expression of his First Amendment rights. While this contention may be meritorious, no authority to this effect was presented. Nonetheless, the court concludes that the memorandum in question was merely a record of what plaintiff was told at the meeting and did not describe how he exercised his right to free speech. Defendant NARF did not violate 5 U.S.C. §552a(a)(7) by maintaining such record, if it maintained it.

Plaintiff contends that Smith's refusal to provide plaintiff with a copy of the memorandum was a willful violation of the Privacy Act. If this memorandum was within the purview of the Privacy Act, the testimony allows the inference that Smith's violation was deliberate, willful and

intentional. However, since there was no violation of the Privacy Act, because of the nature of the memorandum, the question of whether there was a willful violation does not play a part in this decision.

The clerk will enter judgment in favor of defendant and against the plaintiff, with this action dismissed with prejudice and at plaintiff's cost.

DATED this 30th day of August, 1982.

WINSTON E. ARNOW, Senior Judge

NAVAL AIR REWORK FACILITY
NAVAL AIR STATION
PENSACOLA, FLORIDA 32508

Code 935
24 Jun 1981

MEMORANDUM FOR THE RECORD

From: General Foreman, 93500 Branch

Subj: Meeting between Director, Metals Division and Foreman, Shop 93508

Encl: (1) Memo to Production Officer of 22 June 1981

1. A meeting was called at 0700 on 24 June 1981 in the 93000 Division Office and attended by E.W. Smith, Leroy Boyd, and W.E. Coursen.

2. Topic of discussion was the failure of Mr. Boyd to follow proper chain-of-command procedures as evident in enclosure (1). The memo was taken directly to and laid upon the Production Officer's desk, as admitted by Mr. Boyd. The memo was subsequently returned to the 93000 office without action.

3. Mr. Smith stated that he had previously discussed the chain with Mr. Boyd and during this meeting Mr. Smith explained the procedures again to Mr. Boyd. Mr. Smith asked Mr. Boyd if he understood the procedures and Mr. Boyd answered that he did not understand. Mr. Smith restated that he expected all memos initiated at the Foreman level to go via the Branch level.

4. Mr. Smith stated that he was responsible for the Division, that Mr. Coursen was responsible for the Branch, and that Mr. Boyd is responsible for his Shop, not the Division nor the Branch. Mr. Smith also stated that Mr. Boyd was selected as Foreman because of his ability and was made a part of the management team, but at this point he was not showing any signs of cooperating with management.

5. Mr. Coursen did not comment during this meeting.

6. Meeting was ajourned promptly at 0715.

W.E. COURSEN